IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10131 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgement ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANCHHODJI JESINGJI THAKOR - Petitioner(s)

Versus

DIVISIONALCONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MS KRINA THAKKAR for MR YOGESH S LAKHANI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 16/06/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 15.02.1999 passed by the Labour

Court, Kalol in Reference No.274 of 1994, whereby the said Reference was rejected.

2.0 The petitioner was working as a Conductor with the respondent Corporation. On 28.03.1993, while the petitioner was on duty, the bus was checked by the Checking Staff of the respondent Corporation and some irregularities were found in issuing tickets. The competent authority of the respondent Corporation, by order dated 06.10.1993, imposed a punishment of stoppage of three increments with permanent effect. The case was reviewed by the reviewing authority and ultimately, the petitioner was dismissed from service on 27.04.1994.

2.1 Feeling aggrieved by the said order, the petitioner preferred Reference being Reference No.274 of 1994 before the Labour Court, Kalol. The Labour Court by order dated 15.02.1999 rejected the said Reference preferred by the petitioner. Hence, this petition.

3.0 Mr.M H Rathod learned advocate appearing for the petitioner has contended that the charge leveled against the petitioner was that he had attempted to mis-appropriate the amount of tickets though the finding was that he had in fact issued tickets. He has submitted that there was no charge of mis-appropriation against the petitioner and that only a presumption of mis-appropriation was drawn against the petitioner. He has, therefore, submitted that the penalty imposed is disproportionate and the Labour Court ought to have exercised its power under Section 11-A of the I.D.Act.

4.0 Ms.Krina Thakkar learned advocate appearing for Mr.Y S Lakhani for the respondent has submitted that the order of dismissal is just and proper since the allegation of mis-appropriation was proved against the petitioner. She has, therefore, submitted that the impugned order of the Labour Court is just and proper and requires no interference from this

Court in this petition.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. Having gone through the impugned order of the Labour Court and the documents placed on record, it transpires that the charge of mis-appropriation of the amounts in question is not proved against the petitioner. Only a presumption was drawn against the petitioner that he had mis-appropriated the amounts in question. Merely on a presumption, the authorities ought not to have dismissed the petitioner from the service. Moreover, considering the fact that the petitioner had put in more than 23 years of service prior to his dismissal, it would be appropriate to modify the impugned order of dismissal.

6.0 In above view of the matter, the respondent Corporation is directed to treat the petitioner as if he had voluntarily resigned from the service on 27.04.1994, i. e. the date on which he was dismissed from the service. The petitioner is directed to tender his resignation before the respondent Corporation as if he had resigned from the service on 27.04.1994, i.e. the date on which he was dismissed from the service, within a period of one month from today. The respondent Corporation shall pay all the retirement dues to the petitioner as if the petitioner had resigned from the service on 27.04.1994 within a period of one month from the date of his tendering the resignation. The impugned order of the Labour Court is accordingly modified to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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